

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2669-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF: KATIE K., A PERSON
UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

KATIE K.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Oneida County:
MARK A. MANGERTSON, Judge. *Affirmed.*

HOOVER, J. Katie K. appeals a dispositional order finding her delinquent for operating a motor vehicle without the owner's consent.¹ Katie

¹ This is an expedited appeal under RULE 809.17, STATS.

contends that the facts do not support the adjudication because the owner did not place any restrictions on where the car she borrowed could be driven or when it had to be returned. This court concludes that the evidence is sufficient to support a finding of delinquency and therefore affirms.

The relevant facts are undisputed. On December 12, 1996, Katie went out with three friends, Andrew, Heather and Lindsey, until about 2 a.m. When Andrew went to work at 2 a.m., he told the girls that they could use his truck to drive themselves home. The next morning, Lindsey called Andrew and asked if she and Katie could take his truck from Rhinelander to Appleton to go shopping. He agreed, and Lindsey told him they would return in the afternoon.

At 4 p.m., Katie and Lindsey had not returned, and Andrew called his car phone. Katie answered and told Andrew they were in Appleton. Based on this, Andrew thought they would return by around 6 p.m. When they had not arrived by 6 p.m., Andrew called his car phone a number of times before 8:30 p.m. No one answered.

At some point, Katie's mother began to wonder where Katie was, and she discovered that Katie had borrowed Andrew's truck. Katie's mother went to Andrew's home and confronted him and his parents. Andrew's parents were upset that he had given the car to Katie and Lindsey, and they called the police and reported the truck as stolen.

The police located the truck in Eau Claire the following morning. Katie had driven the truck there with Lindsey and Heather as passengers to attend a party. The police arrested the girls and brought Katie and Lindsey home; Heather was detained in Eau Claire.

The State filed a petition alleging that Katie was delinquent on the grounds of taking and driving a motor vehicle without the owner's consent. At the fact-finding trial, the State amended the charge to operating a motor vehicle without the owner's consent. Based on the evidence, the trial court found Katie delinquent. The court placed Katie at a group home and entered a dispositional order lasting one year.

On appeal, Katie argues that the evidence was not sufficient to support a conviction for operating a motor vehicle without the owner's consent because Andrew never placed any restrictions on where the girls could drive the car, or when it had to be returned. She contends that because the State could not prove that she intentionally drove the truck without Andrew's consent, the evidence is insufficient to support her conviction.

Andrew's testimony regarding his statements about using the truck are undisputed. When Lindsey called to ask if she and Katie could take the car to Appleton to go shopping, Andrew agreed. He testified that he did not place limits on their use of the truck that evening, nor did he give the girls a specific time by which it had to be returned. Katie testified, however, that she did not ask permission to drive the truck to Eau Claire.

The question in this case is whether the uncontested evidence is sufficient to support a finding of guilt under § 943.23(3), STATS. Under this statute, the State is required to prove that Katie operated a vehicle without the owner's consent, and that she knew that such driving was without the owner's consent. *See id.* The application of law to undisputed facts presents a question of law this court reviews without deference to the trial court's decision. *See Ball v.*

District No. 4, Area Board of VTAE, 117 Wis.2d 529, 537, 345 N.W.2d 389, 394 (1984).

Section 943.23(3), STATS., provides: “Whoever intentionally drives or operates any vehicle without the consent of the owner is guilty of a Class E felony.” In the comment to the jury instruction, the committee describes its interpretation of what the offense is intended to cover: “[T]he class E felony applies where a person is lawfully in possession of a vehicle but operates it in a manner that goes beyond the scope of the use authorized or permitted by the owner.” WIS J I—CRIMINAL 1467.2, cmt. 3. Thus, the issue in this case is whether Katie operated the truck in a manner that went beyond the scope of the use authorized by Andrew.

This court concludes that the evidence was sufficient to support the elements of operating a motor vehicle without the owner’s consent beyond a reasonable doubt. The evidence sufficiently demonstrates that Katie operated the truck beyond the scope of the use permitted by Andrew. While Andrew testified that he placed no specific limits on where the girls could drive the truck, and that he did not think it would have made a difference in his permission if they had told him they were going to Eau Claire rather than Appleton, the fact remains that he consented to the girls taking his truck to Appleton, not Eau Claire. The terms of consent asked for and obtained established implicit parameters on where the girls could drive the truck. While it appears from his testimony that Andrew would have consented to the girls taking the truck to Eau Claire, they did not ask him for such consent, and nothing he said can be construed as giving them permission to take the truck elsewhere. Under the facts before this court, what Andrew would have agreed to does not inform on the scope of the permission Katie knew she had when she operated the truck. This court therefore concludes that the evidence

sufficiently supports the elements of operating a motor vehicle without the owner's consent.

By the Court.—Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

